

## Message Text

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INFO OCT-01 EUR-12 ISO-00 EB-07 AGR-05 CEA-01 CIAE-00

COME-00 DODE-00 FRB-03 H-02 INR-07 INT-05 L-02 LAB-04

NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15 STR-04

TAR-01 USIA-06 PRS-01 SP-02 OMB-01 FEA-01 /092 R

DRAFTED BY TREASURY:HSHELLEY:CLJ

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FM SECSTATE WASHDC

TO AMEMBASSY WARSAW PRIORITY

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E.O. 11652:N/A

TAGS: ETRD, PL

SUBJECT: ANTIDUMPING PROCEEDINGS: POLISH GOLF CARS

REF: WARSAW 2218

1. FOLLOWING BACKGROUND INFORMATION MAY BE USED BY EMBASSY  
AS THOUGHT APPROPRIATE IN DISCUSSING SUBJECT CASE WITH  
POLISH OFFICIALS: ANTIDUMPING INVESTIGATION OF POLISH  
GOLF CARS WAS INITIATED ON JUNE 14, 1974. INVESTIGATION  
HAS FOLLOWED NORMAL COURSE OF ANTIDUMPING CASES INVOLVING  
STATE-CONTROLLED ECONOMY COUNTRIES. ANTIDUMPING REGULA-  
TIONS REQUIRE THAT IN SUCH CASES, PRICE COMPARISONS BE MADE  
BETWEEN EXPORT PRICE TO U.S. FROM FOREIGN COUNTRY AND CON-  
STRUCTED VALUE AS REFLECTED BY PRICES OF SUCH OR SIMILAR  
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MERCHANDISE IN A NON-STATE-CONTROLLED-ECONOMY COUNTRY.

TRADE ACT OF 1974 STATUTORILY SUPPORTS SUCH COMPARISONS. AFTER CONDUCTING MARKET SURVEY OF NON-STATE-CONTROLLED-ECONOMY COUNTRIES, AND AT SUGGESTION OF ATTORNEY FOR POLES, CANADIAN PRODUCER WAS SELECTED FOR COMPARISON PURPOSES.

2. SALES AT LESS THAN FAIR VALUE PORTION OF ANTIDUMPING INVESTIGATION NORMALLY IS CONCLUDED WITHIN SIX MONTHS AS PROVIDED IN REGULATIONS AND STATUTE. IN COMPLICATED CASES,

THE INVESTIGATION CAN BE EXTENDED AN ADDITIONAL THREE MONTHS. SIX-MONTH PERIOD ENDED ON DECEMBER 14, 1974 IN POLISH CASE AND ALTHOUGH CASE DID NOT COMPLETELY MEET USUAL CRITERIA TO BE CONSIDERED A COMPLICATED CASE, THE INVESTIGATION, OVER THE OBJECTIONS OF THE COMPLAINANT IN THE ACTION, WAS EXTENDED FOR THREE MONTHS AT THE REQUEST OF THE POLES TO ALLOW THEM TO SUBMIT FURTHER DATA.

3. POLES HAVE NOT BEEN SUBJECTED TO ANY UNUSUAL STANDARD OF PROOF. PROBLEMS CAUSED BY ALLEGED INSUFFICIENCY OF TIME TO PRODUCE EVIDENCE PRIMARILY HAVE BEEN CAUSED BY FAILURE OF THE POLES AND THEIR ATTORNEYS TO RESPOND EXPEDITIOUSLY TO REQUESTS FOR INFORMATION. ON JUNE 13 PEZETEL WAS SENT A LETTER INFORMING THEM OF THE INVESTIGATION AND REQUESTING PRICING INFORMATION REGARDING PEZETEL GOLF CAR. THIS LETTER CLEARLY STATED THAT TO BE CONSIDERED ALL CLAIMS MUST BE DOCUMENTED WITH VERIFYING DATA. PEZETEL DID NOT RESPOND TO THE JUNE 13 LETTER UNTIL NOVEMBER 18 WHICH GAVE CUSTOMS LITTLE TIME TO ANALYZE THE MATERIAL. THE NOVEMBER 18 SUBMISSION INDICATED THE LIKELIHOOD OF SALES AT LESS THAN FAIR VALUE SO PEZETEL REQUESTED ADDITIONAL TIME TO SUBSTANTIATE ITS CLAIM FOR AN ECONOMIES OF SCALE ADJUSTMENT. ON DECEMBER 14 AN EXTENSION WAS GRANTED TO MARCH 14, 1975. (FYI: DURING 3-MONTH EXTENSION PERIOD, SHIPMENTS OF GOLF CARS TO U.S. FROM POLAND INCREASED SUBSTANTIALLY. IMPORTS FOR JANUARY AND FEBRUARY OF 1975 WERE MORE THAN DOUBLE IMPORTS FOR THE SAME PERIOD IN 1974. JANUARY 1975 IMPORTS WERE 9 TIMES DECEMBER 1974 IMPORTS.) ON FEBRUARY 20, 1975, PEZETEL MADE ITS NEXT SUBMISSION. PEZETEL, THROUGH ITS ATTORNEYS, SUBMITTED A DETAILED CLAIM FOR LARGE ECONOMIES OF SCALE ADJUSTMENTS, LIMITED OFFICIAL USE

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BUT AGAIN SUBMITTED LITTLE EVIDENCE TO VERIFY THE CLAIM. TREASURY RECOGNIZES VALIDITY OF ECONOMIES OF SCALE CLAIM, BUT MUST HAVE SUFFICIENT DOCUMENTATION TO QUANTIFY AN ADJUSTMENT.

4. FAILURE TO MAKE SUBMISSIONS IN GOOD TIME HAS LEAD TO MANY OF PEZETEL'S PROBLEMS. THEY HAVE OFTEN MADE THEIR SUBMISSIONS JUST PRIOR TO THE DATE ON WHICH A DECISION MUST

BE MADE. THIS ALLOWS LITTLE OR NO TIME TO CORRECT DEFICIENCIES. A SMALL ADJUSTMENT HAS BEEN MADE FOR ECONOMIES OF SCALE, AND TO THE EXTENT ADDITIONAL ADJUSTMENTS ARE DOCUMENTED, THEY WILL BE MADE UP TO THE TIME OF A FINAL DUMPING FINDING(SHOULD SUCH A FINDING BE MADE).

5. PARAGRAPH 5 OF REFTTEL PARTIALLY CONCERNS INJURY WHICH IS NOT RELEVANT TO TREASURY INQUIRY AND CANNOT BE CONSIDERED AT THIS STAGE OF THE INVESTIGATION. A PRIMA FACIE CASE OF INJURY SUFFICIENT TO INITIATE THE INVESTIGATION

WAS MADE IN JUNE 1974. SHOULD TREASURY FINALLY DETERMINE SALES AT LESS THAN FAIR VALUE, CASE WOULD BE REFERRED TO U.S. INTERNATIONAL TRADE COMMISSION FOR AN INJURY INVESTIGATION. POLES COULD THEN RAISE ALL ISSUES RELEVANT TO INJURY CONSIDERATION IN PARAGRAPH 5 OF REFTTEL.

6. PARAGRAPH 5 OF REFTTEL ALSO MENTIONS TIRES, BATTERIES, AND CHANGERS. AN ADJUSTMENT HAS BEEN MADE FOR THESE ITEMS.

7. EMBASSY MAY MAKE FOLLOWING ADDITIONAL POINTS TO POLES:

(A) ANTIDUMPING INVESTIGATIONS ARE INITIATED ONLY

ON RECEIPT OF A PROPER PETITION FROM THE U.S. INDUSTRY. DUMPING DUTIES ARE NOT ASSESSED UNLESS BOTH SALES AT LESS THAN FAIR VALUE AND INJURY TO DOMESTIC INDUSTRY ARE FOUND.

(B) U.S. STATUTE IS APPLIED IN NON-DISCRIMINATORY MANNER, WITH EVERY CARE GIVEN TO ENSURING DUE PROCESS TO ALL PARTIES CONCERNED.

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(C) USG AND TREASURY HAVE BENT OVER BACKWARDS TO ACCOMMODATE POLES. IN ADDITION TO GRANTING 3-MONTHS EXTENSION IN THE INVESTIGATION IN THE ABSENCE OF NORMAL CRITERIA FOR SUCH AN EXTENSION, TREASURY OFFICIALS UP TO AND INCLUDING DEPUTY SECRETARY GARDNER HAVE MADE THEMSELVES AVAILABLE TO POLISH EMBASSY OFFICIALS WHENEVER THEY HAVE REQUESTED MEETINGS.

(D) PROCEDURES REQUIRED BY LAW AND REGULATION ARE NOT SUBJECT TO MODIFICATION BY TREASURY IN RESPONSE TO ESSENTIALLY POLICY ARGUMENTS. GIVEN HIGH VOLUME OF CASES INVESTIGATED BY TREASURY (182 SINCE 1967) ADMINISTRATIVE PROCEDURES MUST BE APPLIED UNIFORMLY. IN ADDITION, LAW MUST BE IMPLEMENTED IN A FASHION WHICH WILL STAND THE

TEST OF JUDICIAL REVIEW.

(E) IT IS HOPED THAT POLES WILL MAKE GOOD USE OF  
TIME REMAINING TO THEM TO PROVIDE FACTS WHICH WILL SUB-  
STANTIATE THE THUS FAR UNCORROBORATED ASSERTIONS THEY  
HAVE MADE REGARDING ECONOMIES OF SCALE. KISSINGER

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